

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
Shelby Division



In Re:)
) Case No. 00-40366
DEXTER MAURICE THOMPSON and)
) Chapter 7
CAROLYN MASHELLE THOMPSON,)
)
)
Debtor(s).)
_____)

JUDGMENT ENTERED ON AUG 12 2004

ORDER

This matter is before the court upon the debtors' Motion to Reopen Case to Pursue Discharge Violations and Other Relief Against Creditors in this Proceeding ("Motion to Reopen") and the response thereto of American General Financial Services, Inc., Bombardier Capital, Inc., and Bank One. After consideration of the Motion to Reopen, the responses thereto, and the arguments of counsel, the court has concluded that the Motion to Reopen should be denied because the debtors have not met their burden of demonstrating circumstances sufficient to justify the reopening.

1. The debtors filed a voluntary Chapter 13 petition on May 31, 2000, which was subsequently converted to a Chapter 7.

2. On September 24, 2002, the Discharge of Debtor was entered, the Final Decree was entered, and the case was closed.

3. On June 12, 2004, the debtors filed the Motion to Reopen seeking the entry of an order reopening their case so their attorney could pursue legal action against at least six different creditors. In support of the Motion to Reopen, the debtors alleged that "on April 2, 2004, the male debtor obtained a copy of his

credit report, which revealed that the above named creditors were improperly reporting negative tradelines." At the hearing on this matter, the debtors offered no additional factual information supporting their need to reopen this bankruptcy case.

4. This court has broad discretion in determining whether or not to reopen a closed case bankruptcy case. See In re Levy, 256 B.R. 563, 566 (Bankr. D.N.J. 2000). The court should consider a variety of factors when making such a determination, including:

[1] the length of time that the case was closed; [2] whether a non-bankruptcy forum, such as state court, has the ability to determine the issue sought to be posed by the debtor; [3] whether prior litigation in bankruptcy court implicitly determined that the state court would be the appropriate forum to determine the rights, post-bankruptcy, of the parties; [4] whether any parties would be prejudiced were the case reopened or not reopened; [5] the extent of the benefit which the debtor seeks to achieve by reopening; and [6] whether it is clear at the outset that the debtor would not be entitled to any relief after the case were reopened.

See In re Otto, 311 B.R. 43, 47 (Bankr. E.D.PA. 2004) (citations omitted). In addition, the party seeking to reopen the case has the burden of demonstrating circumstances sufficient to justify the reopening. See id.

5. With respect to the above enumerated factors, this case had been closed for almost two years when the debtors filed their Motion to Reopen, a considerable amount of time. In that regard, the court notes that the bankruptcy process is not a cradle to grave proposition. The purpose of bankruptcy is for debtors to

obtain a fresh start - not to provide them permanent protection from any of their creditors' post-discharge actions.

6. The debtors have alternative forums in which to file claims against their creditors if, in fact, those creditors are improperly reporting information to credit reporting agencies.

7. The third factor is not applicable in this case, and the court does not believe either party would be significantly prejudiced whether the case is opened or not reopened, as the debtors' potential claims can be adjudicated in another forum.


8. The fifth factor, the benefit the debtors seek to achieve by reopening the case, does not weigh in favor of the debtors because the results they seek to accomplish by reopening their bankruptcy case can also be attained by pursuing claims against their creditors in another appropriate forum.

9. Finally, with respect to the last factor, the debtors have alleged that certain creditors were "improperly reporting negative tradelines" in violation of the discharge injunction of 11 U.S.C. § 524(a)(2). Section 524(a)(2) provides that a discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor" See 11 U.S.C. § 524(a)(2). Without knowing anything more than the bare bones allegations found in the debtors' Motion to Reopen, it appears to the court that simply reporting

information to a credit reporting agency is not an act to effect collection of an outstanding debt in violation of the discharge injunction. See In re Vogt, 257 B.R. 65, 70 (Bankr. D.CO. 2000).

10. Thus, the court concludes that the debtors have not met their burden of demonstrating facts sufficient to justify reopening their case and denies their Motion to Reopen.

It is therefore ORDERED that the debtors' Motion to Reopen Case to Pursue Discharge Violations and Other Relief Against Creditors in this Proceeding is DENIED.


(Dated as of date entered)

George R. Hodges
United States Bankruptcy Judge